

# TUCSON POLICE DEPARTMENT

## CRITICAL INCIDENT REVIEW BOARD

6155 S. EARP WASH LANE

JULY 31, 2018

FATAL OFFICER  
INVOLVED SHOOTING



# Table of Contents

<b>Involved Parties .....</b>	<b>3</b>
<b>Investigative Methodology .....</b>	<b>3</b>
<b>Factual Background .....</b>	<b>4</b>
<b>Administrative Review .....</b>	<b>6</b>
<b>CIRB Analysis .....</b>	<b>6</b>
<b>CIRB Members .....</b>	<b>8</b>

## INVESTIGATIVE CASE INFORMATION

**CIRB Number:** 18-0421  
**TPD Case Number:** 1807-31-0533  
**Date of Incident:** July 31, 2018  
**Location of Incident:** 6155 S. Earp Wash Lane

## INVOLVED PARTIES

### **Field Response**

Detective David Ortiz #47469

- Counter Narcotics Alliance – Midlevel and Transportation
- SWAT Operator
- Tenure: 13+ years

Officer Brook Smith #39618

- Training Academy – Staff Officer
- SWAT Operator
- Tenure: 20+ years

Officer Joseph Jensen #53102

- Operations Division Midtown – Squad 7 Patrol
- SWAT Operator
- Tenure: 6+ years

### **Community Member**

Mr. David Judge 05/12/1965

- Armed with a 9mm Smith & Wesson M&P in rear waistband and a 9mm Smith & Wesson M&P in front holster
- Deceased

## INVESTIGATIVE METHODOLOGY

The Tucson Police Department (TPD) Critical Incident Review Board (CIRB) convened to review this incident with a focus on department policy, tactics, supervision, equipment, use of force, decision-making, and training. CIRB evaluation included the following modes of inquiry: document and video review; review of interviews conducted by the Central Investigations Division (CID) and the Office of Professional Standards (OPS).

## FACTUAL BACKGROUND

On July 31, 2018 at 6:33 p.m., Tucson Police Department officers responded to a shooting at 6155 S. Earp Wash Lane. Ms. Mary Ann Judge called 911 reporting her son, David Judge, shooting an assault rifle inside the house. She escaped the house and went to a neighbor's house to call 911. Mary Ann reported David was delusional and believed people were hiding in the house. She thought he may have shot himself and stated there were multiple firearms in the house. Bullet holes were visible on the exterior of the residence.

Officers were dispatched at 6:35 p.m. and the first officers arrived at 6:41 p.m. Sergeant Lissette Gomez copied the call for service, responded to the staging area, and began coordinating response to the scene. Patrol officers gathered information from Mary Ann, contained the residence, and attempted to locate a phone number to initiate phone contact with David. Field Response Unit and SWAT Sergeant Adam Kidd requested on-duty SWAT officers respond and replace the inner perimeter patrol positions. On-duty hostage negotiators (HNU) were also requested. Patrol officers evacuated the surrounding houses and shut down vehicle and pedestrian traffic in the area. On scene resources included shields, long guns, K9 officers, hostage negotiators, SWAT officers, and crisis intervention trained (CIT) officers. The Department of Public Safety (DPS) provided stop sticks, which were placed behind the front and rear tires of a white SUV in the driveway of 6155 S. Earp Wash Lane (registered to Mary Ann Judge) preventing the subject being able to flee in it. Sergeant Gomez maintained incident command (IC) and Sergeant Kidd became the operations chief.

At 7:38 p.m., Pima County Sheriff's Department (PCSD) Communications advised David Judge called and only wanted to speak to the FBI. Mr. Judge stated he tried to shoot someone and the PSCD dispatcher stated she would transfer him to TPD, but he refused. He stated he would come out and surrender when the FBI arrived. She started the transfer to the FBI and Mr. Judge hung up. Hostage negotiators were able to make telephone contact with Mr. Judge, but he was uncooperative and continuously disconnected the telephone line. No one else was believed to be inside the residence.

At approximately 8:45 p.m., a full SWAT and Hostage call out was initiated. Lieutenant Lee McNitt assumed incident command. SWAT held a briefing and placed the Ballistic Armored Transport Truck (BATT) in front of the residence on the southeast corner. Announcements were made using the long-range acoustic device (LRAD<sup>1</sup>) and hostage negotiators continued, unsuccessfully, to attempt contact via text messages and telephone calls. A warrant was obtained to enter the residence and SWAT breached the front door using explosives. The Explosive and Hazardous Devices Detail (EHDD) was on scene and facilitated the use of robots to enter the residence in an attempt to locate Mr. Judge. The large robot cleared the majority of the first floor before malfunctioning. The smaller robot was introduced and eventually moved to the second floor.

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<sup>1</sup> An acoustic hailing device developed by LRAD Corporation to send messages and warning tones over longer distances or at higher volume than normal loudspeakers.

Operators were able to view real-time video (not recorded) of the robot's view and attempted communication through the robot's speaker.

At the top of the stairs, the robot observed Mr. Judge's bedroom door partially barricaded from the outside and the hatch to the attic open with the ladder deployed. It appeared Mr. Judge may be in the attic. The decision was made to use less lethal munitions to breach the air vents to the attic and introduce pepperball to elicit a response from Mr. Judge since the robot was unable to get a visual into the attic. Two teams deployed to breach the vents on both sides of the attic. One team utilized the anti-riot weapon enfield (ARWEN<sup>2</sup>) and Officer Smith and Officer Jensen deployed pepperball into the attic for area saturation. The robot video confirmed the attic had been saturated with pepperball powder, but only an inaudible verbal sound was detected from Mr. Judge.

The robot then focused on Mr. Judge's bedroom. The robot cleared the items barricading the door and gained visual into the bedroom, observing Mr. Judge lying on the floor with an object that appeared to be a rifle next to him. The incident commander directed SWAT to introduce pepperball into Mr. Judge's bedroom from the outside. An ARWEN was used to breach the bedroom window and Officer Jensen deployed pepperball into the room resulting in Mr. Judge exiting the bedroom and coming downstairs at 12:24 a.m.

Mr. Judge came to the front door holding an object in his hand, later determined to be a metal water bottle. Commands were given to Mr. Judge to guide his movements for safe detention. He initially followed commands and dropped the water bottle but walked backwards along the sidewalk toward the driveway rather than across the yard as instructed. No weapons could be seen on Mr. Judge as he made these movements. Mr. Judge ended up behind a tree/bush impairing the officers' view of him for a short period of time. Upon moving out from behind the tree, two handguns could be seen in his waistband; one in the front and one in the back. Mr. Judge's demeanor became more agitated. He moved toward the end of the driveway and turned to face away from the officers with his arms up. Mr. Judge could be heard telling the officers to "just shoot him" or "just kill him". He did not follow commands to get on the ground. Mr. Judge then quickly turned around facing the officers, reached down toward his waistband and raised his hand/arm toward the officers in a motion of a quick draw and shoot. Detective David Ortiz fired 6 rounds at Mr. Judge and he fell to the ground. SWAT officers approached Mr. Judge, removed two handguns from his waistband, and provided aid but he appeared to be deceased. He was officially pronounced by Tucson Fire Department Captain Louis DuPont, assigned as the Tactical Emergency Medical Support deployed with SWAT, at 12:31 a.m. Officers then entered the residence and confirmed no one else was located inside.

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<sup>2</sup> An ARWEN is a non-lethal launcher which fires 37 mm non-lethal rounds (foam or wooden or tear gas payload) designed for riot control.

## **ADMINISTRATIVE REVIEW**

The Office of Professional Standards conducted an administrative review of this incident, including all aspects of the criminal investigation. The conclusion of the investigation found Detective Ortiz's use of force to be *Justified* and *In-Policy*. Additionally, the administrative review found the use of pepperball by Officer Smith and Officer Jensen to be *Justified* and *Within Policy*.

## **PIMA COUNTY ATTORNEY'S OFFICE REVIEW**

The Pima County Attorney's Office (PCAO) reviewed the investigative package prepared by the Criminal Investigations Division. PCAO found the lethal force used by Detective Ortiz was *Justified*. CIRB also concluded the use of lethal force by Detective Ortiz within department policy. Detective Ortiz's actions were found to be necessary to protect the lives of the officers and community members in the immediate area.

## **CIRB ANALYSIS**

This incident began as a shots fired with an assault rifle inside a residence call. It devolved into an officer involved shooting after Mr. Judge emerged from the home after hours of negotiation with two firearms in his waistband. After a change in Mr. Judge's demeanor and a swift action of reaching towards his waistband and raising his arm, Detective Ortiz discharged his firearm at Mr. Judge causing him to fall to the ground with lethal injuries.

CIRB evaluated components of the overall response. The following analysis highlights focused topics.

### **Communication**

Communication between the multiple units working this scene was adequate. Working on a tactical frequency, hostage negotiators relayed information being sent to and received from Mr. Judge. The members of EHDD working the robots relayed information they saw in real-time, helping with tactics and decision making as the event progressed.

### **Tactics**

#### *Provocation*

There is no evidence suggesting the actions of officers or Detective Ortiz provoked the use of force. Officers had an obligation to be present and address the incident. Mr. Judge was provided multiple opportunities to surrender peacefully without any level of force over a long period of time, but he refused to comply with lawful orders. The ARWEN was used to break the vents and front window to allow pepperball to be introduced. Officer Jensen and Officer Smith deployed pepperball to saturate the area and entice Mr. Judge's exit. The tactic was approved and ordered by the incident commander. Upon Mr. Judge's exit, he was given multiple

opportunities to surrender peacefully, but he refused. Mr. Judge made a furtive<sup>3</sup> movement toward his handgun and pretended to point it at officers in an apparent attempt to elicit a lethal response. His actions provoked a response from Detective Ortiz.

#### *De-escalation*

Officers were on scene approximately 4 hours prior to shots being fired. In that time, officers gathered pertinent information to peacefully end the incident. Verbal commands were given over the PA system and the phone. Hostage negotiators attempted contact by phone, text, and PA to convince Mr. Judge to peacefully surrender. His request for the FBI was fulfilled. The EHDD robot was used to gain a visual of Mr. Judge to facilitate safe interactions and communication. SWAT officers deployed less lethal munitions in the form of pepperball area saturation to elicit Mr. Judge's exit. They were not aimed directly at Mr. Judge. The pepperball had an apparent effect on Mr. Judge resulting in him exiting the residence as desired.

Upon exit, Mr. Judge was given loud, clear commands as evidenced by his initial compliance. Movement commands and commands not to reach for the weapons were given even after learning he exited the residence armed with two handguns in the presence of clearly identified police officers. Mr. Judge became agitated and non-compliant. He yelled for officers to shoot him multiple times, but no force was used until he presented a perceived lethal threat to officers and the community.

#### *Proportionality*

Communication with Mr. Judge was attempted for an extended period of time using different means, but he refused productive communication. He had already committed felony offenses and possessed the ability to continue to be a threat to officers and the community. Those facts increased the immediacy of the need to detain Mr. Judge. The ARWEN and pepperball were used to saturate the area to entice Mr. Judge to exit because it was unsafe for officers to enter the residence to locate and detain Mr. Judge.

Detective Ortiz only had a fraction of a second to react to the perceived lethal threat Mr. Judge presented. Detective Ortiz articulated the lethal threat presented to him, other officers, and the community based on his own observations and knowledge he received regarding Mr. Judge firing a rifle multiple times prior to police arrival. Additionally, Mr. Judge exited the residence armed while in the presence of law enforcement indicating he did not intend to peacefully surrender. Detective Ortiz perceived an immediate lethal threat and responded with lethal force. He stopped lethal force when the threat was no longer perceived.

#### **Equipment**

The first robot used by the EHDD squad malfunctioned prior to clearing the first floor. A second, smaller, robot was sent into the residence to complete securing the first floor and moved to the second floor. The robot allowed real-time video viewing to the operator and provided another

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<sup>3</sup> Attempting to avoid notice or attention, typically because of guilt or a belief that discovery would lead to trouble; secretive.

means of direct communication for the officer through the speaker to Mr. Judge. The robot aided in decision making throughout the situation and assisted with officer safety due to the level of violence Mr. Judge had already shown.

### **Supervision**

During this incident there was strong supervision at all levels of department response. No deficiencies were noted in the performance of field, incident command, investigative, or specialized response personnel.

## **CIRB MEMBERS**

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Chairperson, Deputy Chief Chad Kasmar

City Attorney, Ms. Julianne Hughes

Independent Police Auditor, Mr. Mitch Kagen